Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability

CC Docket 98-147

COMMENTS OF THE COALITION OF UTAH INDEPENDENT INTERNET SERVICE PROVIDERS

Donald Weightman
510 C Street, N.E.
Washington D.C. 20002
(202) 544-1458

William J. Evans
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street
Suite 1800
Post Office Box 45898
Salt Lake City, Utah
84145-45898
(801) 532-1234

Counsel for CUIISP

September 25, 1998

SUMMARY

The Coalition of Utah Independent Internet Service Providers submits these comments, which summarize its members' experience with US WEST's Utah roll-out of its xDSL service, to show that anticompetitive conduct is a serious problem in advanced services markets. US WEST has bottleneck control over the local loop component of DSL service, but Utah ISP's compete with a US WEST affiliate in providing Internet access. US WEST has used its control to foreclose CLEC's from providing high speed data transport services. US WEST has also discriminated by delays in providing services to customers of Utah Coalition ISPs as compared with customers of its affiliate, and marketing and sales arrangements which favor its affiliate. There are particularly acute problems with joint marketing by US WEST and its affiliate, and with fair and equal access to network information. Such service discrimination is especially anticompetitive in fast-moving high technology markets where gaining early adopter customers is critical, where customers may find it difficult to switch, and where ISP's compete on quality and responsiveness of service.

The Commission should act by unbundling the components of DSL, and by requiring non-discriminatory services. Computer III requirements should remain in place as new technologies like DSL are introduced. And if the proposal to permit provision of advanced services through a separate subsidiary is adopted, unbundling and antidiscrimination requirements must remain. The Utah Coalition supports the suggestion of the ISP/C for a simple system to monitor compliance.

TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND

The Coalition of Utah Independent Internet Service Providers ("CUIISP" or "Utah Coalition") is a Utah non-profit corporation consisting of twenty-seven Internet service providers ("ISPs") providing Internet access services throughout Utah.[1] US WEST Communications, Inc. ("US WEST") is an Incumbent local exchange carrier ("ILEC") offering local exchange services and other telecommunications services in Utah. US WEST offers Internet access services in Utah, through "uswest.net," an affiliated retail department selling Internet access services to consumers.

The Utah Coalition files these comments because the Coalition and its members believe that their experience in the roll-out of high speed Internet connectivity in Utah will benefit the Commission and its staff in reviewing the effect of discriminatory telecommunications service on competition in broadband information services, notably Internet access. US WEST has used its control of the local loop to try to stifle competition in broadband technologies that enhance Internet access.

Digital Subscriber Line ("DSL") service is designed to provide a digital voice and data

[1] ArosNet, Burgoyne Computers Inc., CastleNet, Coastlink, DirecTell, EagleNet Online, Fibernet , I-80, InfoWest, Internet Connect, Internet Technology Systems, inQuo, Konnections, NETConnect, Connect A Net, PCFastNet, PDQ Internet, Redrock Internet, SISNA, Software Solutions, Utah Internet Services, VitrexNet, Vyzynz, Wasatch Communications Group, WebIt!, Web Guy Productions, Western Regional Networks, Xmission, XPressweb.

connection over copper wires at speeds of 256 kbps and higher. Most customers who take DSL service will use it to increase the speed of their Internet data transmission. Although DSL-based service may be seen by consumers as a single Internet support service, on the supply side DSL has three components. There is the upgrade to the local loop, where this digital service is not compatible with an ordinary analog computer modem, but instead requires a special DSL modem on the end user's premises. Even then, at the other end of the local loop, a special switch, the digital subscriber line access multiplexer ("DSLAM"), must be installed to split voice (which will be routed to the telephone system) from data transport (which will be routed to the Internet). In Utah, the data is routed over US WEST's Asynchronous Transfer Mode ("ATM") network to an Internet service provider with compatible digital equipment. Finally, the ISP then transfers the data to and from the rest of the Internet.

As far as the Utah Coalition can tell, US WEST is the only Utah provider of the first component of DSL-based Internet connectivity: the segment running from the end-user over the local loop to the DSLAM switches.

I. US WEST's Anticompetitive Practices in the Utah DSL Market Show the Need to Prevent Discrimination in Providing Advanced Services

From the Utah Coalition's perspective, the issues posed in this proceeding boil down to a fundamental question:

Will allowing the ILECs like US WEST to offer advanced telecommunications services through an unregulated but separate affiliate preclude discrimination in related information services like Internet access?

As will be seen, the answer here is "no". Additional safeguards are required. To establish why, the relation of demand for high-speed Internet access (an information service) with supply of broadband such as DSL (an "advanced" telecommunications service) will be set out. Then we will show that proposals like the one here which serve to protect competition in telecommunications are necessary -- but not sufficient -- to protect competition in Internet access, as a form of information service. Because the markets are so closely tied, protecting Internet access must be considered when addressing the possible market structure in upstream telecommunications services like DSL.

A. Why Broadband Internet Connectivity Matters to Advanced Telecommunications Services

The Utah Coalition's argument turns on three simple, critical facts: the demand in the market for DSL is driven by demand for high speed Internet access; the supply of DSL runs through the bottleneck of the local loop; and, in their early emergent stages, high technology markets like DSL broadband are particularly vulnerable to being locked in by anticompetitive conduct.

The driver for home, home-office, and small business interest in DSL is the desire to cut

short the "World Wide Wait". However, to meet the demand for high-speed Internet connectivity, the Utah Coalition ISPs must obtain last mile telecommunications services from US WEST, their competitor in supplying those Internet connectivity information services. At present, this competitor controls the only source of last mile transportation, the local loop.

Because advanced broadband services like DSL and Internet access are complementary, and both depend on last mile telecommunications, both are vulnerable to monopoly leveraging. Incumbent local exchange carriers like US WEST, or their affiliates, are, however, also competing in components of DSL and other broadband services, like data transport and Internet access. US WEST has not hesitated to use its control of the local loop to favor its affiliate ISP at the expense of the independent Utah Coalition ISPs.

The customers at risk in such newly-developing high technology markets are "early adopters". These customers are critical to market penetration.[2] When such customers are lost to slow wholesale service, retail competition delayed is retail competition denied. In addition, the growing use of E-mail addresses and web page URL's for personal and business identification inhibits switching from ISP to another. Similar considerations have driven the statutory requirement in Section 251(b)(2) that telephone numbers must become portable to the extent feasible. As the Commission has recognized,

[2] See Geoffrey Moore, Crossing the Chasm, the standard text on high technology marketing.

> Number portability is essential to meaningful facilities-based competition in the provision of local exchange service because survey data show that customers are reluctant to switch carriers if they must change telephone numbers. In practical terms, the benefits of competition will not be realized if new facilities-based entrants are unable to win customers from incumbent providers as a result of economic or operational barriers.

In the Matter of Telephone Number Portability (Second Report and Order) CC Docket No. 95-116 (¶ 4)(August 18, 1997).

Simply put, the switching costs for Internet-related identification are no less of a barrier. The burden of notifying dozens, hundreds, or thousands of correspondents of a change in E-mail addresses or URLs locks customers in to the initial supplier of Internet access. This is all the more true for business customers, especially those with several locations and internal networks. The cost of reconfiguration, even for a dissatisfied customer, means that the ripple effects of unfair advantages at the market's early stages are felt long afterward.

To see that discrimination has occurred, it may be helpful here to consider the DSL market in Utah against the background of Computer III safeguards. In evaluating the adequacy of interconnection to sustain competitive access, the Commission has stated it will look to:

-- systematic differences in service access;

-- end-user perceptions of inequality; or

-- technical differences.

See Third Computer Inquiry, Order on Reconsideration, 2 FCC Rec. 3035, 3048 (1987).

B. How US WEST Has Provisioned DSL

The discrimination suffered by the Utah ISPs has taken two forms: denial or delays in service, and discriminatory sales and marketing practices. They will be treated in turn.

1. US WEST Has Denied or Delayed Access to Essential Components of DSL Service to its Competitors.

As to competitive access, pursuant its state tariff, (with one exception) US WEST has refused to allow Competitive Local Exchange Carriers ("CLECs") to provide service for the data transport segment from the DSLAM switch to the Utah Coalition ISPs' premises and equipment. Under the tariff US WEST filed in Utah, US WEST is to be the sole provider of that circuit. (Attachment II). The FCC tariff filed for this service (Attachment III) is to the same effect.

This issue -- of competition in the data transport segment of DSL-based Internet access -- bears emphasis. Although US WEST told the Commission in earlier Section 706 dockets that it would make such interconnection available, it has relied on its Utah tariff to deny CLEC

provisioning of data transport (from DSLAM switches to ISP equipment) as part of DSL service.[3] That Utah tariff states (emphasis added):

> Section 8.1.2
>
> D. ....
>
> 2. MegaCentral Access Link
>
> The MegaCentral Access Link is a Company-provided physical connection between a disclosed ATM Central Office or MegaCentral Service Point, and the MegaCentral customer premises.

More recently US WEST has stated that it will abandon this position, purportedly in response to this Commission's rulings in the 706 dockets. US WEST has not, however, filed an amended tariff with this agency or in Utah to allow a CLEC to provide data transport as part of DSL-based service.

The Utah Coalition understands US WEST's earlier comments to state that interconnections would be available for such services.[4] Those statements were incorrect. Until US WEST actually modifies its tariff, the statements are still incorrect. Although the discrepancy may

---

[3] See Comments of US WEST, Inc., in CC Dkt. No. 98-78, Petition of the Association for Local Telecommunications Services ("ALTS") for a Declaratory Ruling Establishing Conditions Necessary To Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996 (June 18, 1998) at 28-34 (Enclosed in pertinent part as Attachment I).

[4] Those cited above and enclosed as Attachment I.

simply be the result of miscommunications within the company, the inconsistency underscores the need for this Commission to be vigilant as to actual market practices when setting policy and enforcing rules in this sensitive area.

Until or unless there is competitive access to the data transport component (from the DSLAM switches to the ISP connection), US WEST will remain the monopoly provider of this service. Yet it has failed to identify capacity needs for ISP customers, who therefore cannot plan their own market development. US WEST has not been forthcoming about available circuit, switch, and port capacity.

US WEST has claimed that equipment is not available to support the DSL-based service requested by the retail customers of the Utah ISPs. US WEST knew, or should have known, that there were not sufficient capacity and facilities in place to assure that ISPs would be able to begin offering Internet access to customers through Us WEST's MegaBit Service. At least one ISP waited for nearly two months to be connected to the ATM network after the request for connection had been made and the ISP's line had been in place at the connection point with US WEST. US WEST has, however, apparently had no trouble in making connections for the DSL services offered through its affiliate, uswest.net.

Other customers have experienced delays and difficulties in obtaining MegaCentral Links (i.e., equivalent private line transport connections) and MegaCentral Ports from US WEST.

US WEST knew how many ISP customers had requested the service and that it would need to provide them with high speed lines to support the MegaCentral service. Yet, it failed to do so, while continuing to provision its own ISP. As a result, Utah Coalition ISP's have lost DSL customers to US WEST's affiliate.

2. Discriminatory Provisioning, Sales, and Marketing Practices Have Given Us WEST an Unfair Advantage in Customer Perception.

Several Utah Coalition ISPs already have been substantially delayed in entering the market for DSL-compatible Internet access service because of US WEST's initial refusal to allow a CLEC to provision data transport lines for DSL. A number of Utah ISPs had immediate access to CLEC fiber in April, 1998, but no access to equivalent US WEST data transport. These ISPs could have begun providing DSL-compatible Internet access in time to effectively compete with uswest.net, but for US WEST's refusal to allow a CLEC to provide data transport.

Moreover, while US WEST has knowledge of which parts of the loop are suitable for DSL, the competing ISPs do not. US WEST has not hesitated to use that knowledge for joint marketing with its affiliate to target potential customers with access to loops which will support DSL. This advantage stems directly from US WEST's control of the local loop. This situation presents the clear risk of discriminating in favor of uswest.net in using such targeting information.

US WEST has also taken advantage of its position as Utah's only provider of DSL on the local loop to market its affiliate's Internet access to end users. U S WEST has established a toll-free 1-888 number for potential DSL customers to call to order service. The voice mail menu greeting callers makes uswest.net the first option, relegating its competitors to a collective, and anonymous, second option. Although the customer is calling US WEST for DSL service, not the uswest.net Internet service, the voice mail menu creates a clear and unmistakable link between DSL and uswest.net, with an equally clear and unmistakably anticompetitive effect.

When a customer calls US WEST to sign up for DSL service, the customer is correctly informed that he or she must select an Internet service provider that can accommodate a DSL connection. US WEST sales representatives have used this customer contact to urge the customer to sign up with its affiliate for Internet service. Apparently, US WEST's customer representatives either have not known or were unwilling to tell the customers that there are other DSL-compatible ISPs. In at least one instance, US WEST informed a customer that a certain ISP was not DSL compatible when, in fact, the ISP had repeatedly but unsuccessfully sought connection to the US WEST high speed data network.

US WEST's protocol for marketing DSL is different for customers of uswest.net than for customers of other ISPs. A uswest.net customer, for example, can obtain DSL-based service and Internet access service with a single phone call to a friendly US WEST representative. Customers of other Utah ISPs must make at least one call to US WEST and another to the ISP if they want

comparable service.

A number of customers who have been willing to tolerate this inconvenience have been slammed by US WEST to uswest.net. ISPs' customers have been connected to uswest.net after the customers had specifically requested US WEST to connect the circuit to the independent ISP. In fact, the first customer to receive DSL service in Utah was slammed from a Utah Coalition ISP to US WEST's affiliate. Many telephone calls from both slammed customers and ISPs have been required to correct the problem. Slamming is overtly and egregiously anticompetitive, suggesting the need for stringent protective measures, rather than after-the-fact penalties.

Finally, US WEST has given the use of its brand name to its Internet access affiliate. The millions of advertising and other promotional dollars invested in corporate good will now constitute an asset for the affiliate in customer (and other end-user) name recognition.

Such anticompetitive conduct must be reined in. DSL, as the prototype of the advanced services being considered in this docket, requires safeguards to promote competition until genuine market forces can emerge. Fortunately, the tools -- in the form of Computer III unbundling and antidiscrimination requirements -- for DSL are in place. What is needed is enforcement of those requirements, and the application of those tools to other advanced services, as necessary.

II. DSL and Similar Advanced Services Should be Unbundled and Offered Without Discrimination.

A. The Commission Should Rule That DSL Is Subject to Computer III Requirements.

As a useful first step, the Commission should make it clear that the local loop segment of DSL telecommunications service falls within the requirements of Computer III. A straightforward way to do this would be a ruling that DSL, as "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information," is a basic service under Computer II. Second Computer Inquiry, 77 FCC 2d 384, 420 (1980).[5]

This is consistent with Commission precedent for packet-switched transmission. See Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 2449, 2460 n.28 (1988) ("[Accunet Packet Service] is a packet-switched data transmission service that does not include protocol processing and is classified as a basic service.") Just like other basic services DSL is pure

---

[5] DSL also comes within the definition of "telecommunications" set out in the Telecommunications Act of 1996: "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). We understand that the Commission to have done this in ¶ 35 of the Memorandum Opinion and Order initiating this proceeding. For purposes of this pleading, the two definitions are coextensive. The ruling requested here by the Utah Coalition would supply an affirmative answer to the issue noted in fn. 56 of ¶ 35 of the Memorandum Opinion and Order.

transport, appropriately subjected to common carriage regulations.

The ruling requested by the Utah Coalition simply restates the common law principles codified in Section 202. It is unlawful for a common carrier "to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services," or "to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[6] Applying these principles to the DSL market in Utah means that US WEST may not deny essential services to a competing ISP, or discriminate against that ISP while providing that service to its unregulated affiliate. The Commission's Memorandum Opinion and Order makes this point, that non-discriminatory access is a "continuing obligation" (¶37), but the Utah Coalition has not yet seen it in practice.

Hence, the Commission should rule that DSL must be unbundled and made available to competitors, at cost-based rates and on non-discriminatory terms and conditions. Moreover, under the requirements of Section 251, the ILEC must also be required to unbundle the data hauling component of DSL (from DSLAM switches to Internet access points), and make comprehensive access available to CLECs.

US West's denial of access and other discriminatory practices in Utah underline the need

---

47 U.S.C. § 202(a).

for application of these requirements. US West has bundled data transport supply with access to the DSL enhancement of the local loop. As to the Internet access portion of DSL, by delays, and discrimination in service and in marketing, US WEST has given its affiliate a head-start in the market for broadband Internet access.

B. Computer III Access and Anti-discrimination Requirements Must Apply Regardless of Whether and How the Structural Separation Option is Chosen.

The Commission has proposed that ILECs such as US West could be allowed to offer DSL services through separate affiliates, with structural separation akin to that required under Computer II. The crux of the proposal is that the affiliate would be free of some statutory obligations arising under Section 251, with the objective of protecting competition in communications services (for present purposes, basic services under the nomenclature of Computer II). As the Utah Coalition understands it, the idea is to keep the retail exchange telecommunications markets competitive as new technologies are introduced.

However, this structural separation will not protect ISP's which are not themselves CLECs, such as the Utah Coalition ISPs. Such ISPs are not granted access rights pursuant to section 251, which are the focus of the structural separation requirements at issue here. Therefore, the structural safeguards being considered here will not, without more, serve to protect competition in information services ("enhanced" services), including Internet access. Unbundling

and antidiscrimination requirements are needed for information services as well. Hence the response to the query in ¶¶ 37 and 49 of the NPRM should be to extend these requirements in the regime under discussion.

The experience with DSL in Utah as a test case bears this out. Although US West purports to offer DSL pursuant to Computer III, obligations, US West has nonetheless bundled DSL with data transport and discriminated in providing DSL services.[7] The Commission needs to make it clear that Computer III requirements apply to DSL, as the prototypical advanced service.

It can do so by adopting the suggestion made in that non-CLEC, independent ISPs have the same "section 251-type unbundling" access rights as CLECs. *Computer III* Further Remand Proceedings, 13 FCC Rcd 6040, 6091 (1998). But more is needed, because there is an additional risk of discrimination depending on where within the corporate structure advanced telecommunications services (like DSL) and information services (like Internet access) are located. The dominant carrier and its affiliates might try to argue that only the regulated carrier is subject to the Computer III unbundling and nondiscrimination requirements, and that an affiliate providing both DSL and ISP services need not offer DSL at nondiscriminatory rates — or offer it at all — to independent ISPs.

The Utah Coalition understands filing a DSL Tariff purportedly pursuant to an amendment to a CEI plan as tantamount to recognizing obligations under Computer III. See Attachment III.

The ILECs should not be permitted to play such a shell game, which would move -- rather than remove -- anticompetitive conduct. From the perspective of an independent ISP as a competitor in information services, the abuses are no different. Additional safeguards are required and Computer III requirements should apply regardless of how DSL and ISP services are distributed within the family of the local monopoly carrier and its corporate affiliates.

C. The Transfer of Intangible Assets Such as Network and Customer Information and Brand Names Must be Addressed.

The experience of the Utah Coalition ISPs suggests that two other corporate assets -- network information and brand names -- must be considered as part of any structural approach to mitigating market power as new technologies are introduced.

The first of these assets, network information, arises from control of the network. Prior access to this network information constitutes a competitive advantage. For example, prior access to information on DSL-qualified local loops gives an ILEC or its affiliates a head start in targeting potential customers on those loops for marketing. Another example is prior knowledge of when and where capacity on DSLAM switches will be available. The Utah Coalition suggests that some combination of (intra-corporate) "Chinese wall" requirements and (extra-corporate) competitive disclosure requirements may be needed for such network information. And equal access to information means timely access to information, and may mean delaying a service until

all are at the starting gate.[8] How these requirements will be mixed and matched to the needs of competition will depend on whether and how the corporate affiliate providing advanced telecommunications services (like DSL) is allowed to provide information services (like Internet access).

A second, related point, as noticed in ¶113 of the NPRM, is the use of corporate brand names. The Utah Coalition has learned through its members' experience that brand names confer a competitive advantage on the ILEC's ISP affiliate. The advantage is amplified by two factors arising from switching costs: one specifically present in Utah, the other generic.

US WEST has made sure that once customers sign up with uswest.net, they will be reluctant to leave for another ISP. US WEST's DSL price list originally included a "MegaSubscriber Change Charge" of $75.00, a striking negative incentive to change providers. This is nothing more than another barrier to the ISPs' entry into the market for DSL subscribers. US WEST has since reduced the charge to $45.00. This is still a significant sum: the anticompetitive disincentive remains firmly in place.

More generally, the significant switching costs described above imply that the playing field

---

These comments are responsive to the queries on parity of access to loop data in ¶¶ 157-158 of the NPRM portion of the Memorandum Opinion and Order. However, the fair and equal access to loop information described there for telecommunications competitors, i.e. CLECs, must also extend to other competitors, like ISPs.

should be level in the first place. Therefore, there should be a strong presumption against the transfer of brand names from ILECs to affiliates. Where the same affiliate is both offering Internet access and other advanced communications services, the Utah Coalition suggests the presumption should be irrebuttable, and transfer of brand names should be forbidden.

D. The Commission should Adopt A Procedure For Public Monitoring of Compliance with Antidiscrimination and Access Requirements.

The Utah Coalition ISPs have had a lot of experience in a very short time with discrimination in access, provisioning, and marketing practices, through which US West, as supplier of DSL, favors its affiliate at the expense of its competitors. Even though these practices are anticompetitive and thus contrary to statutory policy, and may also be in violation of federal regulatory requirements, as a practical matter the rules may not always be enforced.

Taken separately, delays in responding to a competitor's request, or misuse of network and customer information, may not warrant the cost and burden of instituting formal proceedings, here or at the state level. Taken together, especially as a new service is introduced, such incidents may have a considerable anticompetitive effect, as a succession of lost customers cascades into a foreclosed market.

Hence, the Utah Coalition specifically endorses the Internet Service Providers' Consortium

proposal in this regard. The ISP/C has suggested

> Specifically, ISP/C proposes that the Common Carrier Bureau add an area to its Internet web page in which an ISP can electronically lodge copies of protests sent to the local RBOC or GTE, in cases where the ISP believes the carrier has not fulfilled its obligations. Accompanying the document would be a list of key terms including name of the ISP, name of the carrier, location, service at issue, date, and a few words summarizing the allegation. The web page would automatically assign a case number. The RBOC or GTE would be encouraged to lodge a copy of its reply, if any, under the same case number, and the ISP could continue the exchange if necessary. The depositary would be available for public inspection, with participants asked not to post material they identify as proprietary or otherwise entitled to nondisclosure under the Freedom of Information Act.

The proposal, at a very slight burden to the Commission, has many advantages:

- creating incentives to address and resolve (or at least explain or deny) concerns;
- creating readily available data for early identification and rectification of emerging patterns and practices of discrimination;
- facilitating dispute resolution, either without litigation, or by accelerating Section 208 pre-complaint processes; and
-- disseminating performance and quality of service data to customers and potential

competitors in these emerging markets.

CONCLUSION

US WEST has not hesitated to leverage its control over the local loops to foreclose competition in other components of DSL-based high speed Internet access. Independent ISPs like the members of the Utah Coalition and nascent broadband markets like DSL are vulnerable to denial of access or service discrimination like that described here.

The Commission should act by unbundling high speed data transport from telecommunications services from end-user to the central office switch, and by requiring non-discriminatory services where competition in DSL-based services is not feasible. Computer III requirements should remain in place as new technologies like DSL are introduced. And if the proposal to permit provision of advanced services through a separate subsidiary is adopted, unbundling and antidiscrimination requirements must remain. The Utah Coalition supports the suggestion of the ISP/C for a simple system to monitor compliance.

Respectfully submitted,

Coalition of Utah Independent Internet Service Providers

By its attorneys

Donald Weightman

Donald Weightman
510 C Street, N.E.
Washington D.C. 20002
(202) 544-1458

William J. Evans
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street
Suite 1800
Post Office Box 45898
Salt Lake City, Utah
84145-45898
(801) 532-1234

September 25, 1998

ATTACHMENT I

Utah
CUIISP
DPU 01-004
ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition of the Association for Local Telecommunications Services ("ALTS") for a Declaratory Ruling Establishing Conditions Necessary To Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)))))	CC Dkt. No. 98-78

COMMENTS OF U S WEST, INC.

William T. Lake
John H. Harwood II
Jonathan J. Frankel
David M. Sohn
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Robert B. McKenna
Jeffry A. Brueggeman
U S WEST, INC.
1020 19th Street, N.W.
Washington, D.C. 20036
(303) 672-2861

Counsel for U S WEST Communications, Inc.

Of Counsel:
Dan L. Poole

June 18, 1998

SUMMARY

Four months ago, U S WEST filed a petition for advanced-services regulatory relief demonstrating that CLECs and other data service providers were failing to serve smaller and rural communities in U S WEST's region. The petition set forth in detail how granting U S WEST regulatory relief would enable it to deploy data infrastructure deeper into the West and Midwest than any other carrier has done. It also demonstrated how U S WEST provided CLECs with unbundled, conditioned loops and collocation (including cageless collocation), which is all they need to be able to provide competitive services on an equal footing with U S WEST.

ALTS has now filed, in effect, an out-of-time third set of comments on that petition, claiming that the petition cannot be granted until the Commission completes general proceedings on the scope of Sections 251, 252, 271, and 706 of the Telecommunications Act, together with a broader rulemaking on collocation. But ALTS does not dispute the specific facts U S WEST presented, nor does it provide evidence that U S WEST is failing to provide CLECs with everything they in fact need from incumbents to provide competitive data services. Accordingly, notwithstanding ALTS's petition, the Commission should continue considering U S WEST's petition for individual relief on its own merits and promptly issue a decision.

In any event, ALTS makes no legal case for the declaratory ruling it seeks. ALTS asserts, without argument, that Sections 251, 252, and 271 necessarily govern incumbent LECs' provision of data services unless the Commission forbears from their application. But Congress made clear that the unbundling and discounted resale duties of Section 251(c) apply to carriers only in their capacities as "incumbent local exchange carriers," and these data services do not constitute "telephone exchange service or exchange access" — the services that define a LEC. Moreover, even if this section did apply, the Commission would still have authority under Section 251(d)(2) to exclude the non-bottleneck data facilities from the list that must be unbundled. As for Section 271, the Commission may use its statutory power to modify LATA boundaries to waive LATA restrictions for the limited purpose of enabling BOCs to bring data services to communities it could not otherwise economically serve. Finally, ALTS's proposed ruling would eliminate Section 706 as a tool for achieving Congress's infrastructure goals.

ALTS's request for relief makes no sense on policy grounds. ALTS's laundry list of technical demands is premised on the erroneous notion that CLECs are entitled to expropriate each and every innovation and investment that an incumbent LEC makes. ALTS does not attempt to distinguish facilities that are currently bottlenecks from those that CLECs can and do obtain from many sources, or even to distinguish the interconnection needed for voice services from that needed for data. ALTS's demands would squelch any incentive an incumbent would have to innovate and invest in infrastructure.

In short, competition in the data services market is in no way dependent on regulated access to incumbent LECs' advanced data facilities or networks. ALTS's requested relief offers no policy benefits capable of offsetting its substantial distortion of investment incentives.

III. THE SPECIFIC REGULATORY INTERVENTIONS THAT ALTS PROPOSES ARE UNNECESSARY BECAUSE U S WEST HAS STRUCTURED ITS DATA SERVICE OFFERINGS IN A WAY THAT ENABLES OTHER CARRIERS TO COMPETE.

ALTS's basic claim is that competition in the data communications market cannot come about unless incumbent LECs are required by governmental fiat to share their new data networks with their competitors, either on an unbundled basis at prices based on forward-looking cost, or on a resold basis with prices discounted from retail. As discussed above and in U S WEST's petition for regulatory relief, this notion is contrary to law, economics, and good policy. Moreover, the excessive unbundling and resale requirements that ALTS proposes are simply not needed to fulfill the procompetitive mandates of the 1996 Act. U S WEST's data services are offered in a manner which is fundamentally procompetitive and enables all competitors to take reasonable advantage of those U S WEST facilities for which current alternatives may be limited. In this section, U S WEST responds to ALTS's laundry list of allegations concerning the adequacy of the interconnection its members receive.

A. U S WEST's xDSL Services.

In its petition for regulatory relief, U S WEST demonstrated that applying Sections 251 and 271 to its xDSL services makes it impossible to bring those services to

hundreds of thousands of customers in the less urban areas of U S WEST's territory. As a grant of the ALTS petition would continue to deny these customers those services, it is appropriate to discuss in some detail how U S WEST offers its xDSL services.

First, while it is by no means the only available regulatory choice, U S WEST is offering the entirety of its xDSL (MegaBit) services as basic telecommunications services. The link between the subscriber and the xDSL equipment (MegaSubscriber service) is provided pursuant to intrastate tariffs, and the intraLATA link between the DSL equipment and the ISP (MegaCentral service) is provided pursuant to either intrastate or interstate tariffs as appropriate. Therefore, MegaBit services are subject to the Commission's Open Network Architecture rules, which means that U S WEST's Internet access services must connect to the U S WEST MegaBit services on the same terms and conditions as are available to competing ISPs. U S WEST has not sought to waive these requirements in its request for regulatory relief. Thus, ISPs have a full and fair opportunity to use U S WEST's xDSL services on a non-discriminatory basis.

Second, U S WEST will make available to CLECs, pursuant to Section 251(c), the unbundled conditioned loops necessary to deliver xDSL service to an end user. While loop alternatives are rapidly appearing and growing in a number of markets (with cable modems in particular showing enormous growth[22]), U S WEST's loops remain a primary source of connectivity to many end user customers, particularly residential customers. A loop must be

---

[22] Illustrating the great potential of these services, Microsoft and Compaq have just announced that they are investing $ 425 million in Road Runner, which provides content and high-speed Internet backbone services to approximately 90,000 cable modem customers. "Computer Companies Buy Stake in Road Runner Cable Modem Service," Comm. Daily at 2 (June 16, 1998). The same article reports that Road Runner's cable modem service is potentially available to 27 million cable households. Id. at 3.

"conditioned" to be usable for xDSL services, meaning that bridge taps and load coils must be removed. To the extent reasonable and feasible (and this is a constraint on U S WEST's provision of xDSL services as well), U S WEST will make conditioned loops available to CLECs for the provision of xDSL and/or local exchange services. With respect to these loops:

- A "conditioned loop" means just that — a loop without bridge taps or load coils. ALTS refers something which it calls a "DSL loop." As far as we can determine, ALTS's "DSL loop" is a loop which contains all of the electronics that a competitor can obtain and put in place as easily as U S WEST can. U S WEST does not offer a "DSL loop" as ALTS defines it as an unbundled network element for the reasons described above.

- A purchaser of a conditioned loop, just like the purchaser of any other kind of unbundled loop, must be a carrier and agree to undertake the carrier responsibilities attendant to control of the loop. This means that the purchaser of the unbundled loop will completely control the loop, and will be responsible for the customer's voice traffic over that loop (if any) as well as its data services. U S WEST will, of course, enter into an interconnection agreement with such a carrier if the carrier decides to hand off the customer's voice traffic for further delivery to U S WEST's local exchange customers.

- Under current technology, loops created with Digital Line Carrier ("DLC") or similar technology cannot be used to provide xDSL services. U S WEST is hopeful that this limitation on xDSL deployment can be overcome by the end of the year.

Third, U S WEST will make collocation space available for competitors to collocate transmission equipment, which includes xDSL electronics, in U S WEST central offices. Such collocation will include the ability to interconnect the unbundled conditioned loops with the carrier's xDSL electronics to create an xDSL service. U S WEST's user-friendly collocation policies are briefly described in Part III.B.

Fourth, U S WEST will enter into agreements with competitive data carriers to interconnect their respective data networks. Thus a competitive data service provider will not

need to create a complete network in order to provide its customers with the ability to reach the maximum number of potential customers. U S WEST will negotiate in good faith other reasonable terms to govern the interconnection of data networks.

B. U S WEST's Interconnection and Collocation Policies.

ALTS raises a number of demands concerning interconnection in general, suggesting that the Commission predetermine the outcome of interconnection negotiations in a number of areas. For the most part, ALTS's demands go well beyond any legitimate authority the Commission might have to interfere with ongoing interconnection negotiations and the statutory process for settling interconnection disputes, at least on the skimpy and anecdotal record ALTS has submitted. Despite the generally unmeritorious nature of ALTS's demands, U S WEST takes this opportunity to describe how some of these issues have been working themselves out in actual negotiations, just as Congress envisioned.

In its Petition, ALTS asks the Commission to decree that CLECs have "unbundled access" to advanced data facilities. (ALTS Pet. 14-15) This demand frames perhaps an entire regulatory approach to data communications. U S WEST will interconnect with competitive data services, and will offer as unbundled network elements the facilities necessary to permit competitive carriers to offer advanced data services, including unbundled conditioned loops and collocation space for xDSL equipment. Such unbundled loops include loops capable of carrying the various xDSL signals, and of interconnecting to a competitor's xDSL equipment in a U S WEST central office. To the extent that mid-loop regeneration capability can actually permit extension of xDSL service beyond the current 18,000-foot limitation on loop lengths, U S

WEST will offer such regeneration capability as a type of loop conditioning. However, U S WEST will not invest in advanced data capabilities for CLECs, nor (for the reasons described above) is it necessary for it to do so under the Act.

In addition, ALTS requests that the Commission set up a number of complex rules to limit and govern the negotiations for physical collocation space. (ALTS Pet. 18-22) U S WEST has been making significant progress in negotiating with CLECs in this area. Among the collocation matters which have been negotiated:

- U S WEST offers a SPOT collocation option, which permits CLECs to aggregate unbundled network elements at a single U S WEST frame in the central office. SPOT collocation includes a common frame and tie cables in 100-pair increments (called expanded interconnection channel terminations) which provide a demarcation point for the unbundled network elements. Thus the SPOT frame also serves as a point of interface for all unbundled networks ordered by the CLEC.

- U S WEST's SPOT collocation option is clearly distinct from the BellSouth virtual collocation option that ALTS criticizes in its petition. Id. at 20. It is U S WEST's understanding that BellSouth allows CLECs to place a "connection" frame in its central office. U S WEST will permit a CLEC to place a frame in their collocation space. In addition, U S WEST's SPOT collocation option offers CLECs a more cost-effective and efficient method of combining network elements because it allows multiple CLECs to share the SPOT frame and assorted infrastructure.

- Cageless physical collocation is a new concept that U S WEST is introducing in response to the demands of the marketplace through the negotiation process. U S WEST offers cageless physical collocation in increments of nine square feet, depending on walkway space requirements. U S WEST anticipates that cageless physical collocation will be more efficient and lest costly for CLECs because it does not require a cage or one-hundred-square-foot allotments of collocation space.

- U S WEST permits CLECs to connect two collocation spaces via tie cables. This can be done either on the SPOT frame itself or with tie cables between adjacent CLEC cages.

- U S WEST does not offer caged physical collocation space in increments of less than one hundred square feet. Given the fact that each collocation cage requires construction and walkways around the cage, smaller increments are simply not efficient. However, U S WEST's cageless collocation options should make this issue moot.

- ALTS's demand that the Commission impose TELRIC pricing on collocation agreements (ALTS Pet. 21) cannot stand in the face of the Eighth Circuit's decision in Iowa Utilities Board v. FCC and the court's subsequent mandamus order enforcing its mandate.

- U S WEST is trying to develop standard rates for collocation so that neither U S WEST nor CLECs are required to prorate back construction costs.

Further, ALTS questions whether incumbent LECs are providing adequate access to operational support systems ("OSS"), alleging a number of incidents concerning the provision of OSS for traditional telephone services. (ALTS Pet. 22-23). ALTS ignores that there is a fundamental difference between systems supporting the existing circuit-switched voice network and systems developed for and dedicated to advanced data communications services. With respect to data services, OSS is part of network management, is built into the electronics that route the data, and has nothing to do with the underlying voice network. Thus, unthinking extension of the Commission's voice OSS rules to data services would be unwise.

ALTS raises numerous other suggestions which seem to have little to do with anything, much less anything to do with bringing data services to communities that are not currently being served. ALTS condemns the successful court challenges brought by a number of incumbents, id. at 32, and generically (and unhelpfully) urges the Commission not to interfere with specific state proceedings, id. at 38-45. ALTs also asks the Commission to solve a wide variety of perceived and real provisioning issues that have nothing to do with the provision of data services by either incumbent LECs or CLECs. See, e.g., id. at 13, 17, 22-26. These

U S WEST COMMUNICATIONS

ATTACHMENT II

8. MEGABIT SERVICES

8.1 DESCRIPTION
8.1.2 SERVICE ELEMENTS (Cont'd)

D. Access Link (T)

1. MegaSubscriber Access Link (C)

Company-provided, flat-rated residence and business telephone lines serve as the access facilities for MegaSubscriber Services from the customer's home or remote location to their serving wire center. A MegaBit Service customer may use their existing voice channels, or additional voice channels may be purchased by the customer, as set forth in the Exchange and Network Services Tariff.

2. MegaCentral Access Link (C)

The MegaCentral Access Link is a Company-provided physical connection between a disclosed ATM Central Office or MegaCentral Service Point, and the MegaCentral customer premises.

The MegaCentral Access Link transmits data from the customer's host, or central location, to the Company ATM Network. If the Company Central Office which serves the customer's host site or location is not collocated with the ATM Switch or a MegaCentral Service Point, appropriate Company-provided Private Line Transport Service Transport Mileage applies between the customer's serving Central Office and the ATM Switch or MegaCentral Service Point, whichever is closer.

- A 1.544 Mbps, Clear Channel DS1 Private Line Transport Channel Termination. A MegaCentral Port and a Central Office Connecting Channel (COCC) apply in addition to this Access Link.
- A 45 Mbps DS3 Private Line Transport Channel Termination. A MegaCentral Port and a COCC apply in addition to this Access Link.
- A 45 Mbps ATM Cell Relay Optical Access Link (OAL) for customers within the optical reach limits of the ATM serving wire center, as specified in Technical Publication 77378. A MegaCentral Port or an existing ATM Cell Relay Port applies in addition to this Access Link.

The 45 Mbps MegaCentral Access Links support the bi-directional speeds of 3 Mbps up to 45 Mbps, in 3 Mbps increments. (C)

(D)

(M) Material moved to Page 3.

ATTACHMENT III

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)
	)
U S WEST, Inc. Offer of Comparably	)
Efficient Interconnection for On-Line	)
Database Access Services	)

AMENDMENT OF PLAN OF U S WEST, INC.
TO OFFER COMPARABLY EFFICIENT INTERCONNECTION
FOR ON-LINE DATABASE ACCESS SERVICES

U S WEST, Inc. ("U S WEST"), pursuant to the Common Carrier Bureau's Memorandum Opinion and Order,[1] hereby amends its Comparably Efficient Interconnection ("CEI") Plan for On-Line Database Access Services.[2] As specified in the U S WEST On-Line Database Access Services CEI Plan and Amendment[3] and the Federal Communications Commission's directives concerning Open Network Architecture ("ONA"), U S WEST has to this date provided On-Line Database Access Services and functionality only in conjunction with ONA services described in its approved ONA Plan, as amended. Upon the effective date of this amendment, U S WEST will include MegaBit Services in its list of basic services with which On-Line Database Access Services functionality may be offered.

MegaBit Services utilize Digital Subscriber Line technology to provide customers with both voice and high-speed data services over metallic local loop

---

[1] In the Matter of Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1724 (1995).

[2] In the Matter of Bell Operating Companies Joint Petition for Waiver of Computer II Rules, Order, 10 FCC Rcd. 13758 (1995).

[3] See Amendment of Plan of U S WEST, Inc. to offer Comparably Efficient Interconnection for On-Line Database Access Services, filed April 18, 1996; Erratum filed April 26, 1996; Clarifying Letter from Elridge Stafford to Matt Harthum, filed April 30, 1996; Correction to Erratum, filed May 9, 1996.

8. ADVANCED COMMUNICATIONS NETWORKS

8.2 SERVICE DESCRIPTIONS

8.2.3 MEGACENTRAL SERVICE (C)

B. Service Elements (Cont'd) (N)

2. Access Links

MegaCentral Access Links transmit data from the customer's host, or central, location to the serving wire center of the central location, using Company-provided facilities at speeds of 1.544 Mbps or 45 Mbps. A 1.544 Mbps MegaCentral Service customer must purchase a Company-provided DS1 Service Channel Termination, as set forth in Section 7, preceding. A 45 Mbps MegaCentral Service customer must purchase a Company-provided ATM Cell Relay Access Link, as set forth in 8.2.4, following or a DS3 Service Channel Termination, as set forth in Section 7, preceding.

3. Central Office Connecting Channel (COCC)

A COCC provides the ongoing interconnection from the MegaCentral Port to an ATM CRS Access Link or a DS1 or DS3 Service Channel Termination.

4. Service Points

Service Points are geographic locations designated by the Company where the MegaCentral Port can be accessed. The MegaCentral Port utilizes the ATM CRS Service Points which are listed in the National Exchange Carrier Association F.C.C. Tariff No. 4. (N)

facilities. MegaBit Services separate the two types of traffic, allowing simultaneous, bi-directional voice and data transmissions. Data streams are delivered via a 10BaseT or 100BaseT interface between end-user customers and Internet Service Providers or Corporate local area networks.

MegaBit Services will be available on equal terms and conditions to all users in accordance with the above-referenced CEI Plan.[4] U S WEST intends to fulfill its disclosure obligations under the procedures established in the Commission's rules, Section 51.333, Notice of Network Changes: Short Term Notice. U S WEST completed the network disclosures for the 10BaseT and 100BaseT interfaces and filed its Certification of Short Term Notice with the Commission. On August 25, 1997, the Commission released a Public Notice of Short Term Notice Filings. In accordance with the Commission's rules short term notices are deemed final on the tenth business day following the release of the Commission's Public Notice, unless an objection is filed.

Based on the Commission's prompt approval of previously-filed CEI plan amendments, U S WEST respectfully requests the same expeditious handling of this minor amendment.

Respectfully submitted,

U S WEST, INC.

By: Robert B McKenna (RBM)

Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
303/672-2861
Its Attorney

Of Counsel,
Daniel L. Poole

August 29, 1997

[4] See Exhibit A for tariff references and Exhibit B for sample tariffs.

CERTIFICATE OF SERVICE

I, Donald Weightman, hereby certify that copies of the foregoing were served on this 25th day of September by hand to the following:

Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street NW
Washington DC 20554
(Original and four copies)

Janice Miles
Common Carrier Bureau
Policy and Program Plannin Division
Federal Communications Commission
Room 544
1919 M Street NW
Washington DC 20554 (with diskette)

ITS, Inc.
1231 20th St. N.W.
Wasdhington DC 20037 (with diskette)

Donald Weightman